

**WORKERS' COMPENSATION ADVISORY COUNCIL**

**MINUTES ~ ~FEBRUARY 23, 2001 MEETING [1:00 P.M.]  
710 JAMES ROBERTSON PARKWAY  
HEARING ROOM, FIRST FLOOR  
ANDREW JOHNSON TOWER  
NASHVILLE, TENNESSEE**

The meeting was called to order by Mr. Steve Adams, State Treasurer

Voting members in attendance:

Mr. Jack Gatlin [by proxy to Mr. Neeley]  
Mr. Dave Goetz  
Mr. James G. Neeley  
Mr. Bob Pitts  
Mr. Othal Smith, Jr. [by proxy to Mr. Neeley]  
Mr. Steven Turner [by proxy to Mr. Goetz]

Nonvoting members in attendance:

Ms. Jacqueline Dixon  
Mr. Tony Farmer [by conference telephone call]  
Ms. Abbie Hudgens  
Mr. Jerry Mayo

Ex officio members in attendance:

Ms. Sue Ann Head, Administrator-Division of Workers' Compensation  
[designee for Commissioner Michael E. Magill]  
Mr. Neil Nevins, Assistant Commissioner, Department of Commerce and Insurance  
[designee for Commissioner Anne Pope]

Also present:

M. Linda Hughes, Executive Director  
Mr. Dale Sims  
Mr. Dave Wilstermann, Research Analyst

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Mr. Adams called the meeting to order. Minutes from the December 14, 2000 meeting were unanimously approved.

## NEW BUSINESS

### A. REPORT OF STUDY: "State of Tennessee - Workers' Compensation Insurance Market Review"

In November, 2000 the Advisory Council contracted with Tillinghast - Towers Perrin to prepare a report on the competitiveness of the workers' compensation insurance market in Tennessee. Mr. John D. Booth, ACAS, MAAA and William J. Miller, FCAS, MAAA, consulting actuaries with Tillinghast, appeared before the Advisory Council and made the oral presentation of the report and responded to general questions from the Advisory Council.

They reported the overall evidence indicates:

- there is a reasonable degree of competition in the Tennessee workers' compensation insurance market;
- the current system of advisory prospective loss costs has worked better than the former system; and
- there is workable competition in the Tennessee workers' compensation market.

They also reported the following overall findings related to market impact, assigned risk plan and trends:

#### MARKET IMPACT:

- No single company or group of companies controls the market.
- Concentration in the market has been declining since at least 1993 and is not at a level of concern.
- Market structure data show an insurance line that has low concentration.
- Insurers continually are entering and exiting the market creating a healthy turnover of competitors.
- Market conduct data show that there is significant rate variation within classifications suggesting that rates are not being fixed. Employers have been able to reduce their insurance costs by shopping around. Average rate levels have been declining significantly since 1996 due to competitive pressures.

#### ASSIGNED RISK PLAN:

- 1999 is the sixth year in a row that the market share in the assigned risk plan has declined.
- Policy year 2000 shows some increase in the residual market premium volume, which may be due in part to individual insurer financial problems driving some short-term market dislocation.

- During the period of large depopulation (1994-1998), a very high number of small policies moved to the voluntary market.
- By 1998 the composition of the assigned risk plan was dominated by classifications with dangerous occupations.
- Only nine classifications have over 20% of their total class premium volume in the residual market, and only twenty two classes have over 10% of their total class premium volume in the residual market. Most of these classes present difficult underwriting risks.

#### TRENDS:

- 2000 may have been a turning point for the soft market.
- Recently the level of schedule rating and downward deviations by a few carriers had become extreme, and there have been some short-term market coverage availability problems as some carriers' financial troubles have caused them to substantially reduce their writings in Tennessee.
- As a result of these factors, market prices rose in 2000 and the ability to shop around for a lower price was reduced.

Mr. Booth and Mr. Miller suggested Tennessee has three options: (1) revert back to an administered rate system; (2) stay with the current advisory prospective loss cost system; or (3) modify the advisory prospective loss cost system. They indicated the first option is more likely to produce coverage availability issues and to reduce the level of competition in the Tennessee workers' compensation market. The current loss costs system, option #2, will probably produce the highest level of competition most of the time; however, that can lead to the average price charged by the industry to be well below the level of the loss costs and leaves room for greater swings from soft to hard in the market. The third alternative is to maintain the basic structure of the current advisory loss cost system and to make some modifications that would rein in the extreme competition and reduce excessive market fluctuation.

Tillinghast's specific recommendation was to adopt the third option with the following modifications:

- Modification of the regulatory system to require prior approval of all filings for multipliers below 1.0 [unity].
- Granting of authority to the Department of Commerce and Insurance to require any filings for multipliers below 1.15 be actuarially justified, supported and certified. This would allow the Department the option to exercise control over the aggressive pricing tactics that can lead to market disruption.
- Development of a system by the Department of Commerce and Insurance to monitor pricing activity on a timely basis with cooperation and administration by NCCI, with specific means of monitoring the use and magnitude of schedule credits.

At the conclusion of the Tillinghast presentation, the Advisory Council requested the Department of Commerce and Insurance to report at the next Advisory Council meeting its opinions regarding the implications of the Tillinghast recommendations and any Department suggestions for making refinements to and improvements in the system. Also, the Department of Commerce and Insurance was requested to provide information concerning monoline workers' compensation insurance companies authorized to do business in Tennessee.

**B. DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT**

Ms. Sue Ann Head, Administrator of the Division of Workers' Compensation, advised the Advisory Council that by April, all workers' compensation carriers doing business in Tennessee will begin submitting proof of coverage electronically through the NCCI or other approved vendors.

Ms. Head reported the Division has received comments regarding adjuster certification. The Division believes it would be beneficial to all parties involved in the Tennessee workers' compensation system for the State to provide a system for educating and training workers' compensation claims handlers [to result in certification, not licensure] on Tennessee law and the claims handling standards. However, the Department does not feel it has authority to do this without additional legislation. It was suggested by Ms. Head, if the Advisory Council agreed, that legislation be enacted which would require the Department to establish a certification system through administrative rules with oversight by the Advisory Council and the Special Joint Committee on Workers' Compensation. The Advisory Council decided to re-activate its Licensure Subcommittee to meet within the following two weeks to consider the Department's request and report back to the full Advisory Council. Ms. Head also explained that it would be helpful if the Subcommittee would also consider the need for legislation requiring an insurance company to a toll free number with direct access to the specific claims handler unit for Tennessee claims.

She also requested the Advisory Council to consider recommending legislation to correct conflicting language in 50-6-205 (which requires a decision on compensability within 15 days) and 50-6-118(a)(5) which gives 90 days to make the decision. She was requested to prepare recommended language to correct the conflict for the Advisory Council to consider at its next meeting.

Ms. Head told the Advisory Council the program coordinators visited the court clerks following the Advisory Council's October meeting. After reviewing the problems, the Division feels it will be able to make the current system work but if it proves it cannot be made workable by 2002, the Department will recommend changes to the Advisory Council.

The meeting was then adjourned until the next meeting, March 2, 2001 at 9:00 a.m. in House Hearing Room 30 at Legislative Plaza.